

IN THE SUPREME COURT OF THE STATE OF HAWAII

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ALLSTATE INSURANCE COMPANY,  
Plaintiff-Appellee, Cross-Appellee,

vs.

PEARL PRUETT; MEREDITH PRUETT; and IKAIKA PRUETT, a minor,  
Defendants-Appellants, Cross-Appellees,

and

CHARLENE MANGLICMOT, a minor; MICHELLE CASIL, a minor,  
Defendants-Appellees, Cross-Appellees,

and

SALVADOR PEBENITO; BOARD OF WATER SUPPLY, CITY AND COUNTY OF  
HONOLULU, Defendants-Cross-Appellees,

and

DOE 1-10, Defendants.

PEARL PRUETT, individually and as guardian of IKAIKA PRUETT  
and MEREDITH PRUETT,  
Third-Party Plaintiffs-Appellants, Cross-Appellees,

vs.

AIG HAWAII INSURANCE COMPANY, a Hawai'i corporation,  
Third-Party Defendant-Appellee, Cross-Appellant.

NO. 26830

APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 02-1-1404)

JUNE 25, 2008

MOON, C.J., LEVINSON, NAKAYAMA, AND DUFFY, JJ.  
AND ACOBA, J., CONCURRING AND DISSENTING

EM. RIMANDO  
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STATE OF HAWAII

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OPINION OF THE COURT BY NAKAYAMA, J.

Defendants-Appellants, Third-Party Plaintiffs-Appellants, Cross-Appellees, Pearl Pruett, Ikaika Pruett, and Meredith Pruett (collectively, "the Pruett"), appeal from the Circuit Court of the First Circuit's ("circuit court's") October 18, 2004 final judgment partially in favor of Plaintiff-Appellee, Cross-Appellee, Allstate Insurance Company ("Allstate").<sup>1</sup> On appeal, the Pruett assert that the circuit court erred when it determined that Allstate was not obligated to defend or indemnify Pearl and Ikaika Pruett under Allstate's homeowner's insurance policy naming Pearl Pruett as the named insured.

Both Allstate and Third-Party Defendant-Appellee, Cross-Appellant, AIG Hawaii Insurance Company ("AIG") (collectively, "the Insurers"), appeal from the circuit court's October 18, 2004 final judgment partially in favor of the Pruett. On appeal, the Insurers present the following points of error: (1) the circuit court erred when it held that the Pruett were entitled to coverage under the Insurers' automobile insurance policies; (2) the circuit court erred when it determined that the phrase "any person" as used in the automobile insurance policies was ambiguous; and (3) the circuit court erred when it determined that the Pruett were entitled to recover costs and attorney's fees against the Insurers.

For the following reasons, we hold that the circuit court: (1) did not err when it determined that liability

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<sup>1</sup> The Honorable Victoria S. Marks presided.

coverage was afforded to Meredith Pruett and Ikaika Pruett pursuant to the terms of AIG's automobile insurance policy, inasmuch as the manner in which the term "any person" was used in AIG's policy was ambiguous; (2) did not err when it determined that Personal Injury Protection ("PIP") coverage was afforded to Ikaika Pruett pursuant to the terms of Allstate's automobile insurance policy, inasmuch as the manner in which the term "any person" was used in Allstate's policy was ambiguous; (3) erred when it determined that Pearl Pruett and Ikaika Pruett were afforded liability coverage under Allstate's automobile insurance policy because any claim arising from the automobile accident would not arise out of the use of an "insured auto"; (4) abused its discretion in awarding costs and attorney's fees to the Pruetts because the circuit court did not order the Insurers to "pay benefits"; and (5) did not err when it determined that the Pruetts were excluded from coverage under the terms of Allstate's homeowner's insurance policy. Accordingly, we affirm in part and reverse in part the circuit court's October 18, 2004 final judgment.

## I. BACKGROUND

### A. Factual Background

Pearl Pruett is the biological grandmother and adoptive mother of Ikaika Pruett, who is a minor. Meredith Pruett is Pearl's biological daughter, Ikaika's biological aunt, as well as Ikaika's sister as a result of the adoption. Pearl, Meredith, and Ikaika all reside together.

On February 8, 2002, Ikaika was involved in an automobile accident while operating a vehicle owned by Meredith. Ikaika did not have a driver's license at the time of the accident. He also did not have a reasonable belief that he was entitled to operate the vehicle, and had neither Meredith's nor Pearl's permission to use or operate the vehicle.

According to the circuit court's undisputed findings of fact, Charlene Manglicmot, Michelle Casil and others may claim to suffer injuries from the accident. Additionally, Salvador PeBenito and the Board of Water Supply of the City and County of Honolulu and others have claimed or may claim property damage from the accident.

Meredith was listed as the named insured on an AIG automobile insurance policy, which was in effect on the day of the accident. Pearl was listed as the named insured on an Allstate automobile insurance policy and an Allstate homeowner's insurance policy, both of which were in effect on the day of the accident.

**B. Procedural Background**

On June 10, 2002, Allstate filed a complaint in circuit court seeking, inter alia, a judicial declaration that it did not owe duties to defend or indemnify the Pruetts under its automobile insurance policy for any claims or injuries arising out of the automobile accident. Allstate also sought a declaration that it was not required to provide PIP coverage to, inter alia, Ikaika Pruettt.

On July 8, 2002, the Pruetts filed a counterclaim against Allstate, as well as a third party complaint against AIG. In their counterclaim, the Pruetts alleged that Allstate owed duties to defend and indemnify under both its automobile and homeowner's insurance policies. The Pruetts claimed that coverage was owed under the homeowner's policy because the Pruetts "expect property damage and personal injury claims to be asserted against them . . . based on allegations including but not limited to negligent entrustment and negligent supervision of a minor." In its third party complaint, the Pruetts asserted that AIG owed them duties to defend and indemnify under AIG's automobile insurance policy issued to Meredith.

On November 7, 2002, AIG moved for summary judgment on the Pruett's third party complaint. On November 25, 2002, Allstate moved for summary judgment on its complaint and on the Pruett's counterclaim. On December 17, 2002, the Pruetts filed a cross-motion for summary judgment against Allstate and AIG.

On March 4, 2003, the circuit court filed its findings of fact, conclusions of law and order granting in part the Pruetts' cross-motion for summary judgment against Allstate and AIG. The circuit court also denied in part Allstate's motion for summary judgment, and denied AIG's motion for summary judgment. Therein, the circuit court ruled that the exclusions from coverage enumerated in both AIG's and Allstate's insurance policies did not apply to the Pruetts because the phrase "any

person" as used in the policies was ambiguous. Accordingly, the circuit court determined that the Puetts were entitled to coverage under the Insurers' auto policies for personal injury and property damage claims. For the same reason, the circuit court also determined that Ikaika Pruett was entitled to personal injury protection coverage through Allstate's auto insurance policy.

On June 28, 2004, Allstate filed a motion for partial summary judgment as to its duty to defend on a claim alleging negligent parenting by the Puetts. On September 7, 2004, the circuit court granted Allstate's motion for partial summary judgment. In its order, the circuit court concluded that Allstate was not obligated, pursuant to the terms of its homeowner's insurance policy, to defend or indemnify any of the Puetts for any claim to recover for injuries arising from the automobile accident, which included claims for negligent parenting.

On September 8, 2004, the circuit court granted the Puetts' request for an award of costs and attorney's fees. This award was based on the Puetts' prevailing on the issue of coverage under AIG's and Allstate's automobile insurance policies, and not under Allstate's homeowner's insurance policy.

The circuit court's final judgment was filed on October 18, 2004. Notices of appeal were timely filed by the Puetts on

October 22, 2004, AIG on November 15, 2004, and Allstate on November 16, 2004.

## II. STANDARDS OF REVIEW

### A. Summary Judgment

On appeal, the grant or denial of summary judgment is reviewed de novo. See State ex. rel. Anzai v. City and County of Honolulu, 99 Hawai'i 508, 514, 57 P.3d 433, 439 (2002); Bitney v. Honolulu Police Dep't, 96 Hawai'i 243, 250, 30 P.3d 257, 264 (2001).

[S]ummary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion.

Kahale v. City and County of Honolulu, 104 Hawai'i 341, 344, 90 P.3d 233, 236 (2004) (citation omitted).

### B. Interpretation of Insurance Policies

Regarding interpretation of insurance policies, this court has stated:

[I]nsurers have the same rights as individuals to limit their liability and to impose whatever conditions they please on their obligation, provided they are not in contravention of statutory inhibitions or public policy. As such, insurance policies are subject to the general rules of contract construction; the terms of the policy should be interpreted according to their plain, ordinary, and accepted sense in common speech unless it appears from the policy that a different meaning is intended. Moreover, every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy.

Nevertheless, adherence to the plain language and literal meaning of insurance contract provisions is not without limitation. We

have acknowledged that because insurance policies are contracts of adhesion and are premised on standard forms prepared by the insurer's attorneys, we have long subscribed to the principle that they must be construed liberally in favor of the insured and any ambiguities must be resolved against the insurer. Put another way, the rule is that policies are to be construed in accord with the reasonable expectations of a layperson.

Dairy Rd. Partners v. Island Ins. Co., Ltd., 92 Hawai'i 398, 411-12, 992 P.2d 93, 106-07 (2000) (citations, quotation marks, and brackets omitted).

### C. Attorney's Fees and Costs

This court reviews the circuit court's denial and granting of attorney's fees under the abuse of discretion standard. Eastman v. McGowan, 86 Hawai'i 21, 27, 946 P.2d 1317, 1323 (1997) (citation omitted); Coll v. McCarthy, 72 Haw. 20, 28, 804 P.2d 881, 887 (1991). "The trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Lepere v. United Public Workers, 77 Hawai'i 471, 473, 887 P.2d 1029, 1031 (1995) (citation, internal quotation marks, and brackets omitted). Stated differently, "[a]n abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant." State ex rel. Bronster v. United States Steel Corp., 82 Hawai'i 32, 54, 919 P.2d 294, 316 (1996).

TSA Int'l Ltd. v. Shimizu Corp., 92 Hawai'i 243, 253, 990 P.2d 713, 723 (1999) (some citations omitted); see Ranger Ins. Co. v. Hinshaw, 103 Hawai'i 26, 30, 79 P.3d 119, 123 (2003) (same).

## III. DISCUSSION

### A. The Circuit Court Did Not Err When It Determined That the Term "Any Person" Was Ambiguous As Used In the Insurers' Automobile Policies.

The Insurers maintain that the circuit court erred when it determined that the term "any person" was ambiguous as used in their respective automobile insurance policies. In so maintaining, the Insurers urge this court to construe the term



"any person" as unambiguously including family members of the named insured.

1. Selective use of the term "any person" within AIG's auto insurance policy creates an ambiguity that must be resolved against it.

AIG's insurance policy defines an "Insured" as follows:

Part A--Liability Coverage

A. We will pay compensatory damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident.

B. Insured as used in this Part means:

1. You or any family member for the ownership, maintenance or use of any auto or trailer.

2. Any person using your covered auto with your permission.

3. For your covered auto, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.

4. For any auto or trailer, other than your covered auto, any other person or organization but only with respect to legal responsibility for acts or omissions of you or any family member for whom coverage is afforded under this Part.

Contained within this same "Part" is the following pertinent exclusion ("Exclusion No. 8") from coverage enumerated in AIG's insurance policy: "We do not provide Liability Coverage for any person: . . . 8. Using a vehicle without a reasonable belief that that person is entitled to do so."

The terms "you" and "your" are defined in the "Definitions" section of AIG's insurance policy as "[t]he 'named insured' shown in the Declarations; and . . . [t]he spouse if a resident of the same household." The term "family member" is defined as "a person related to you by blood, marriage or adoption who is a resident of your household, or such person while temporarily living elsewhere. This includes a ward or

foster child[.]”<sup>2</sup> The term “any person” is not defined in the policy.

As set forth above, the Insurers urge this court to construe the term “any person” as used in the exclusions section of their insurance policies as unambiguously including family members of the named insured. To support their argument, they point to a majority of jurisdictions which have held accordingly. See, e.g., Hartford Ins. Co. of the Midwest v. Halt, 646 N.Y.S.2d 589, 594, 223 A.D.2d 204, 212 (App. Div. 1996) (overruling Paychex, Inc. v. Covenant Ins. Co., 156 A.D.2d 936, 549 N.Y.S.2d 237 (N.Y. App. Div. 1989) because “the majority of courts that have addressed the issue is correct and that the countervailing view is unreasonable and unjust”);<sup>3</sup> Close v. Ebertz, 583 N.W.2d

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<sup>2</sup> It is undisputed that Meredith Pruett is the named insured. It is also undisputed that Ikaika Pruett satisfies the policy’s definition of a “family member,” inasmuch as he is related to Meredith “by blood” and “adoption,” and both of them reside in the same household.

<sup>3</sup> As explained by the New York court,

The vast majority of courts considering the issue . . . [hold] that the policy unambiguously excludes coverage for anyone, including a “family member”, who uses the vehicle without permission (see, Newell v. Nationwide Mut. Ins. Co., 334 N.C. 391, 432 S.E.2d 284; Allied Group Ins. Co. v. Allstate Ins. Co., 123 Idaho 733, 852 P.2d 485; Estate of Ge Yang v. General Cas. Co., 185 Wis.2d 919, 520 N.W.2d 291 [unpublished decision-text at 1994 WL 269281], review denied 524 N.W.2d 142; Harlan v. Valley Ins. Co., 128 Or.App. 128, 875 P.2d 471, review denied 319 Or. 407, 879 P.2d 1285; Cincinnati Ins. Co. v. Plummer, 213 Ga.App. 265, 444 S.E.2d 378; Hanover Ins. Co. v. Locke, 35 Mass.App.Ct. 679, 624 N.E.2d 615; Kelly v. Threshermen's Mut. Ins. Co., 176 Wis.2d 513, 502 N.W.2d 618 [unpublished decision-text at 1993 WL 98770]; Omaha Prop. & Cas. Ins. Co. v. Johnson, 866 S.W.2d 539 [Tenn.App.]; State Farm Mut. Auto. Ins. Co. v. Casualty Reciprocal Exch., 600 So.2d 106 [La.App.]; Omni Ins. Co. v. Harps, 196 Ga.App. 340, 396 S.E.2d 66; St. Paul Ins. Co. v. Rutgers Cas. Ins. Co., 232 N.J.Super. 582, 557 A.2d 1052; General Acc. Fire & Life Assur. Corp. v. Perry, 75 Md.App.

(continued...)

794 (N.D. 1998) ("The majority of courts[] . . . have concluded the 'any person' language unambiguously includes a 'family member[.]'" ).

However, notwithstanding what these jurisdictions have held, this court has agreed that the term "any person" may be ambiguous when construed within the context of the terms of the insurance policy itself. See AIG Hawai'i Ins. Co. v. Smith, 78 Hawai'i 174, 182-83, 891 P.2d 261, 269-70 (1995) (agreeing with Econ. Fire & Cas. Co. v. Kubik, 492 N.E.2d 504 (Ill. 1986)). In

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<sup>3</sup>(...continued)

503, 541 A.2d 1340, cert denied 313 Md. 612, 547 A.2d 189; Georgia Farm Bur. Mut. Ins. Co. v. Fire & Cas. Ins. Co. of Conn., 180 Ga.App. 777, 350 S.E.2d 325; State Farm Mut. Auto. Ins. Co. v. Kelly, 132 Wis.2d 187, 389 N.W.2d 838, review denied 132 Wis.2d 485, 393 N.W.2d 545; see also, Driskill v. American Family Ins. Co., 698 F.Supp. 789 [E.D.Mo.] [applying Missouri law]; cf., Donegal Mut. Ins. Co. v. Eyler, 360 Pa.Super. 89, 519 A.2d 1005; Wallen v. Acosta, 799 F.Supp. 83, 85, n. 1 [D.Kan.] [applying Kansas law]). The foregoing cases hold that, because the term "any person" is unambiguous and has no technical or otherwise restricted definition in the policy itself, it should be accorded its common meaning (see, Newell v. Nationwide Mut. Ins. Co., supra, 334 N.C., at 401, 432 S.E.2d, at 290; Cincinnati Ins. Co. v. Plummer, supra, 213 Ga.App., at 265-266, 444 S.E.2d, at 380; State Farm Mut. Auto. Ins. Co. v. Casualty Reciprocal Exch., supra, at 108; St. Paul Ins. Co. v. Rutgers Cas. Ins. Co., supra, 232 N.J.Super., at 586, 557 A.2d, at 1054). As a result, those cases hold that "any person" means exactly that, necessarily including any "family member" or even the named insured (see, Newell v. Nationwide Mut. Ins. Co., supra, 334 N.C., at 401, 432 S.E.2d, at 290; Omaha Prop. & Cas. Ins. Co. v. Johnson, supra, at 541; State Farm Mut. Auto. Ins. Co. v. Casualty Reciprocal Exch., supra, at 108; Omni Ins. Co. v. Harps, supra, 196 Ga.App., at 341-342, 396 S.E.2d, at 68). The cases reason that no ambiguity is created merely because one part of the policy establishes general coverage, whereas the other part establishes specific exclusions (see, Omaha Prop. & Cas. Ins. Co. v. Johnson, supra, at 541; General Acc. Fire & Life Assur. Corp. v. Perry, supra, 75 Md.App., at 509, 541 A.2d, at 1342; see also, Driskill v. American Family Ins. Co., supra, at 793).

Hartford Ins. Co. of the Midwest, 646 N.Y.S.2d at 592-93, 223 A.D.2d at 209-10 (alterations added and in original).

Smith, we observed that the "appellants' construction of clause four runs counter to the selective use of" the terms "any person" and "family member" "in defining the scope of coverage in the policy."<sup>4</sup> Id. at 182, 891 P.2d at 269 (emphasis added).

As stated by the Kubik court, by itself, the term "any person," "encompass[es] every possible individual including the insured and his family members." Kubik, 492 N.E.2d at 507.

However, while the terms "family member" and "any person" have a clear meaning when standing alone, that meaning can become, as in the instant case, ambiguous through the manner in which those terms are used throughout the policy. In this regard, we note that the terms "family member" and "any person" are used selectively throughout the policy's exclusions in such a way as to create the impression that they refer to mutually exclusive classes.

Id. (emphasis in original).

This court agreed with the Kubik court's reasoning and concluded that "the selective use of the terms 'any person' and 'family member' in clause four of AIG's policy creates mutually exclusive classes[.]" Smith, 78 Hawai'i at 183, 891 P.2d at 270. Accordingly, a person could not "claim entitlement to coverage . . . by asserting that he is both 'any person' and a 'family member.'" Id.

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<sup>4</sup> Clause four of the insurance policy at issue in Smith stated, as follows:

"Covered person" as used in this Part means:

4. For any auto or **trailer**, other than **your covered auto**, any person or organization but only with respect to legal responsibility for acts or omissions of you or any **family member** for whom coverage is afforded under this Part. This provision applies only if the person or organization does not own or hire the auto or **trailer**.

Id. at 180, 891 P.2d at 267 (bold in original).

Allstate asserts that Smith is distinguishable from the instant case, insofar as "there is no Hawai'i case law construing the term 'any person' as used in" the exclusions to coverage section of an automobile insurance policy. Allstate points out that Smith construed the term "any person" as it was used to define the term "covered person" in the insurance policy in that case, and not as used in the exclusions to coverage section in this case. Additionally, the Insurers assert that the majority view is consistent with Hawaii's rules governing insurance contract interpretation.

However, Allstate overlooks that the Kubik court interpreted a clause that excluded coverage "[f]or any person using a vehicle without a reasonable belief that the person is entitled to do so." 492 N.E.2d at 506. The exclusion at issue in Kubik is virtually identical to Exclusion No. 8 in AIG's automobile insurance policy, as quoted supra. To reiterate, this court in Smith agreed with the Kubik court's analysis and construed the term "any person" as it was used to define the term "covered person" in the insurance policy in that case. See Smith, 78 Hawai'i at 180, 182-83, 891 P.2d at 267, 269-70. Because we applied the Kubik court's analysis to the policy language at issue in Smith, and the interpretation of "any person" as used in an exclusion was at issue in Kubik, it is logical to apply the same analysis to the exclusions in this

case.<sup>5</sup>

The Insurers correctly point out that this court has long held that "the terms of the policy should be interpreted according to their plain, ordinary, and accepted sense in common speech unless it appears from the policy that a different meaning is intended." Dairy Rd. Partners, 92 Hawai'i at 411, 992 P.2d at 106. Additionally, "[a] court must 'respect the plain terms of the policy and not create ambiguity where none exists.'" Smith v. New England Mut. Life Ins. Co., 72 Haw. 531, 537, 827 P.2d 635, 638 (1992) (quoting First Ins. Co. of Hawaii, Inc. v. State ex rel. Minami, 66 Haw. 413, 423-24, 665 P.2d 648, 655 (1983)).

However, we have also said that "because insurance policies are contracts of adhesion and are premised on standard forms prepared by the insurer's attorneys, we have long subscribed to the principle that they must be construed liberally in favor of the insured and any ambiguities must be resolved against the insurer." Dairy Rd. Partners, 92 Hawai'i at 411-12, 992 P.2d at 106-07 (brackets, block format, quotation marks, and citation omitted). In other words, "the rule is that policies are to be construed in accord with the reasonable expectations of a layperson." Id. at 412, 992 P.2d at 107 (block format, quotation marks, and citation omitted). In light of this court's

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<sup>5</sup> AIG contends that Retherford v. Kama, 52 Haw. 91, 470 P.2d 571 (1970), construed the term "any person" "as all-encompassing in determining whether or not a particular claimant qualified as 'any person' sustaining bodily injury under a business general liability policy." However, AIG's reliance on Retherford is misplaced, inasmuch as this court's decision focused primarily on construing the term "with respect to" as used in the insurance policy at issue in that case, and not the term "any person." See generally Retherford, 52 Haw. 91, 470 P.2d 571.

long held principles in construing the terms of an insurance policy, the Insurers' argument that these terms cannot become ambiguous through the manner in which they are used is unpersuasive.<sup>6</sup>

As noted supra, the term "any person" is not defined in AIG's policy. Accordingly, standing by itself, this term "should be interpreted according to [its] plain, ordinary, and accepted sense in common speech . . . ." Dairy Rd. Partners, 92 Hawai'i at 411, 992 P.2d at 106 (quotation marks, block format, and citation omitted). However, this court need not do so if "it appears from the policy that a different meaning is intended." Id. (quotation marks, block format, and citation omitted). Indeed, our analysis of the terms of an automobile insurance policy is not confined to either a single clause or term in isolation from the rest of the policy. See id. ("[E]very insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy." (Quotation marks, citations, and some brackets omitted.)).

In this case, we read AIG's policy as classifying an "Insured" in one of several possible ways: (1) "You" or, as defined, "[t]he 'named insured' shown in the Declarations; and . . . [t]he spouse if a resident of the same household[,]" "for the

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<sup>6</sup> Moreover, it should be noted that the Kubik court's framework for analysis is similar to the manner in which this court analyzes the terms of an insurance policy. The Kubik court recognized that "the terms 'family member' and 'any person' have, standing by themselves, a clear and unambiguous meaning." 492 N.E.2d at 507. However, it further recognized that the "meaning" of these terms "can become[] . . . ambiguous through the manner in which those terms are used throughout the policy." Id.

ownership, maintenance or use of any auto or trailer"; (2) "any family member for the ownership, maintenance or use of any auto or trailer"; (3) "any person" either "using your covered auto with your permission[]" or "[f]or your covered auto, . . . only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part"; or (4) "[f]or any auto or trailer, other than your covered auto, any other person . . . but only with respect to legal responsibility for acts or omissions of you or any family member for whom coverage is afforded under this Part." It is undisputed that Ikaika Pruett qualifies as "any family member" as defined in AIG's policy.

The foregoing categories of an "Insured" appear to be preserved in the exclusions from coverage section of AIG's insurance policy. For example, AIG's policy states that

[w]e do not provide Liability Coverage for any person: . . .  
. (2) For damage to property owned or being transported by  
that person[;] . . . (8) Using a vehicle without a  
reasonable belief that that person is entitled to do so[;] .  
. . [and] (10) For any liability assumed by you or any  
family member under any contract.

(Emphases added.) In light of the manner in which these exclusions are used, we believe that "the reasonable expectations of a layperson" would construe the phrase "that person" to refer to the term "any person," and the terms "you or any family member" to be mutually exclusive to the classification of "any person." See Dairy Rd. Partners, 92 Hawai'i at 412, 992 P.2d at 107 ("[T]he rule is that policies are to be construed in accord with the reasonable expectations of a layperson." (Block format,



quotation marks, and citation omitted.)); see also Smith, 78 Hawai'i at 182-83, 891 P.2d at 269-70. Construing the term "any person" as used in the exclusion section "liberally in favor of the insured[,]" and in light of the multiple classifications created by the definition of an "Insured," the term "any person" is ambiguous and its meaning "must be resolved against the insurer." Dairy Rd. Partners, 92 Hawai'i at 412, 992 P.2d at 107 (brackets omitted). Accordingly, mutually exclusive classes were created from AIG's selective use of the terms "you," "any family member," and "any person." See Smith, 78 Hawai'i at 182-83, 891 P.2d at 269-70. Inasmuch as Ikaika Pruett cannot qualify both under the distinct classes of "any person" and "any family member," we hold that the circuit court did not err when it determined that AIG's Exclusion No. 8 did not apply to Ikaika.

2. Selective use of the term "any person" within Allstate's auto insurance policy creates an ambiguity that must be resolved against it.

Allstate asserts that the circuit court erred when it determined that the term "any person" as used in its exclusions to PIP coverage section of its automobile insurance policy was ambiguous. Specifically, Allstate points to the following exclusions that operate to exclude PIP coverage to Ikaika Pruett:

[PIP] coverage does not apply to bodily injury, sickness, disease or death[] . . . to any person while committing an act punishable by imprisonment for more than one year[,]. . . . [and] to any person while operating or using a motor vehicle without a good faith belief that such person is legally entitled to do so.

The circuit court, however, concluded that an ambiguity existed between the policy's definition of an "insured person" and the

exclusions to PIP coverage quoted above.

Black's Law Dictionary defines a "person" simply as "[a] human being." Black's Law Dictionary 1178 (8th ed. 2004). Standing by itself, it would thus be reasonable for a layperson to expect that the term "any person" to mean "any human being." See id.; see also Dairy Rd. Partners, 92 Hawai'i at 412, 992 P.2d at 107 ("[T]he rule is that policies are to be construed in accord with the reasonable expectations of a layperson." (Block format, quotation marks, and citation omitted.)); id. at 411, 992 P.2d at 106 ("[T]he terms of the policy should be interpreted according to their plain, ordinary, and accepted sense in common speech unless it appears from the policy that a different meaning is intended."). As the Kubik court observed, the term "any person, . . . standing by itself, . . . encompass[es] every possible individual including the insured and his family members." 492 N.E.2d at 507.

However, to reiterate, "while the terms 'family member' and 'any person' have a clear meaning when standing alone, that meaning can become[] . . . ambiguous through the manner in which those terms are used throughout the policy." Id. (emphasis added). In this regard, when these terms "are used selectively throughout the policy's exclusions in such a way as to create the impression that they refer to mutually exclusive classes[,] " an ambiguity results, id., which "must be resolved against the insurer[,] " Dairy Rd. Partners, 92 Hawai'i at 412, 992 P.2d at 107 (block format, brackets, and citation omitted).

Liability coverage is provided by Allstate's auto insurance policy, in pertinent part, as follows: "Allstate will pay for all damages an insured person is legally obligated to pay[] because of[] . . . bodily injury sustained by any person[.]" (Emphases added.) An "insured person" is defined as, inter alia, either "you" or "any resident relative." "You" is defined as "the policyholder named on the declarations page and that policyholder's resident spouse." "Resident" is defined as "the physical presence in your household with the intention to continue living there." The term "any person" is undefined.

Accordingly, the foregoing quoted sentence can be interpreted in the following manner: "Allstate will pay for all damages ["the policyholder named on the declarations page and that policyholder's resident spouse[,]" and "any resident relative"] is legally obligated to pay[] because of[] . . . bodily injury sustained by any person[.]" As discussed supra, this sentence appears to explain Allstate's duty to indemnify an "insured person" from "damages" that an "insured person" is legally obligated to pay . . . ." Pursuant to the foregoing language, it simply does not make sense for an "insured person" to seek indemnification for bodily injuries incurred on himself if a layperson were to construe the term "any person" to mean "any human being." Therefore, in this context, it would be unreasonable to expect a layperson to construe the term "any person" to mean "any human being," inasmuch as the manner in which the term is used above clearly cannot include an "insured

person." See Kubik, 492 N.E.2d at 507; see also Dairy Rd. Partners, 92 Hawai'i at 411, 992 P.2d at 106. Accordingly, Allstate's use of the terms "any person" and "insured person" in its liability coverage section is ambiguous because its selective use of these terms creates "mutually exclusive classes" contrary to the meaning of the term "any person" in its "plain, ordinary, and accepted sense in common speech . . . ." See Kubik, 492 N.E.2d at 507; see also Dairy Rd. Partners, 92 Hawai'i at 411, 992 P.2d at 106.

In this case, an insured must seek compensation from Allstate for his own bodily injuries through any PIP coverage he may have. PIP coverage is provided by Allstate's insurance policy, as follows: "Allstate will pay to or on behalf of the injured person the following benefits in accordance with Hawaii no-fault law." According to its policy, "[p]ayments will be made only when bodily injury, sickness, disease or death is caused by an accident arising out of the operation, maintenance, or use of a motor vehicle as a motor vehicle." Allstate's auto policy defines an "injured person" in pertinent part, as follows:

- a) you or a resident relative who sustains bodily injury, sickness, disease, or death:
  - (i) arising out of the operation, maintenance or use of any motor vehicle as a motor vehicle[.]
- . . . .
- b) any other person who sustains bodily injury, sickness disease or death:
  - (i) arising out of the operation, maintenance or use of the insured motor vehicle or a temporary loaner vehicle[.]

In the PIP coverage section of Allstate's auto policy, the terms "you" and "your" are defined as "the policyholder named on the

declarations page." The term "resident relative" is defined as "any person related to you and residing in your household[,]" and "any minor residing in your household who is . . . in your custody[] or . . . in the custody of any relative who resides in your household." The terms "any person" and "any other person" are not defined by the policy.

There are thirteen exclusions to PIP coverage included in Allstate's automobile policy. Nine of these exclusions refer to the undefined term of "any person," and do not refer to the terms "insured person," "you," or "resident relative." For example, PIP exclusion numbers 1, 2, 3, 4, 7, and 10 state, as follows:

This coverage does not apply to bodily injury, sickness, disease or death:

1. to you or any resident relative while occupying a motor vehicle owned by you which is not an insured motor vehicle.

2. to a resident relative while occupying a motor vehicle owned by that person and for which the security required by the Hawaii no-fault law is not in effect.

3. to a resident relative who is a named insured under any other contract providing the security required by the Hawaii no-fault law.

4. to any person while committing an act punishable by imprisonment for more than one year.

. . . .  
7. to any person while operating or using a motor vehicle without a good faith belief that such person is legally entitled to do so.

. . . .  
10. to any person, other than you or a resident relative, while occupying any motor vehicle outside the State of Hawaii . . . .

Allstate contends that PIP exclusion number 10 demonstrates that the term "resident relative" is included within the broader term of "any person." However, Allstate overlooks that our analysis of the terms of an automobile insurance policy

is not confined to either a single clause or term in isolation from the rest of the policy. See Dairy Rd. Partners, 92 Hawai'i at 411, 992 P.2d at 106 ("[E]very insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy." (Emphasis added and quotation marks, citations, and some brackets omitted.)).

As discussed above, the liability coverage section of Allstate's policy creates mutually exclusive classes through its selective use of the terms "any person" and "insured person." See Kubik, 492 N.E.2d at 507. Moreover, the term "any person" is undefined throughout both the liability and PIP coverage sections of Allstate's auto policy. Because it would be unreasonable for a layperson to construe the term "any person" to mean "any human being" as that term is used in Allstate's liability coverage section, and Allstate essentially argues that the term "any person" should be construed to mean "any human being" in its PIP coverage section, the term "any person" is ambiguous as used throughout Allstate's policy and its meaning must therefore be resolved against the insurer. See Dairy Rd. Partners, 92 Hawai'i at 107, 992 P.2d at 412. Accordingly, we hold that the circuit court did not err when it determined that Allstate's exclusions to PIP coverage did not apply to Ikaika Pruett, inasmuch as he is a part of the "resident relative" class of an "insured person," and not the "any person" class as created by the selective use of those terms in Allstate's auto policy.

**B. The Circuit Court Erred When It Determined That Liability Coverage Was Afforded To Pearl and Ikaika Pruett Pursuant To the Terms Of Allstate's Automobile Insurance Policy.**

Allstate asserts that Pearl and Ikaika Pruett are not entitled to liability coverage because Meredith's vehicle does not qualify as an "Insured Auto" as defined in its automobile insurance policy. Liability coverage is provided by Allstate's auto insurance policy, as follows:

Allstate will pay for all damages an insured person is legally obligated to pay--because of:

1. bodily injury sustained by any person, and
2. damage to or destruction of property, including loss of use.

Under these coverages, your policy protects an insured person from claims for accidents arising out of the ownership, maintenance or use, loading or unloading of an insured auto.

We will defend an insured person sued as the result of an auto accident, even if the suit is groundless or false. We will choose the counsel. We may settle any claim or suit if we believe it is proper.

(Emphasis added.)

Allstate's policy defines an "insured person" in the following ways:

Insured Persons

1. While using your insured auto:
  - a) you,
  - b) any resident, and
  - c) any other person using it with your permission.
2. While using a non-owned auto:
  - a) you,
  - b) any resident relative using a four wheel private passenger auto or utility auto.
3. Any other person or organization liable for the use of an insured auto if the auto is not owned or hired by this person or organization, provided the use is by an insured person under either of the two preceding paragraphs.

The policy defines an "insured auto" as including, inter alia, "[a] non-owned auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished

for the regular use of an insured person.”

Meredith's vehicle, which was a 1990 Toyota Corolla, was listed on AIG's auto insurance policy naming Meredith as the named insured. It is undisputed that Ikaika did not have permission to operate Meredith's vehicle on the day of the accident. Additionally, it is undisputed that Meredith's car is not listed as an "insured auto" under Allstate's auto insurance policy. Thus, notwithstanding that Ikaika Pruett qualifies as an "insured person" under Allstate's policy, inasmuch as he is a "resident relative" who used a "non-owned auto" or a "four wheel private passenger auto or utility auto," Allstate's auto insurance policy "protects" neither Pearl Pruett nor Ikaika Pruett as "insured persons" because any "claim[]" arising from the February 8, 2002 accident would not "aris[e] out of the . . . use[] . . . of an insured auto." See Dairy Rd. Partners, 92 Hawai'i at 411, 992 P.2d at 106 ("[T]he terms of the policy should be interpreted according to their plain, ordinary, and accepted sense in common speech unless it appears from the policy that a different meaning is intended."). Accordingly, we hold that the circuit court erred in its determination that Pearl Pruett and Ikaika Pruett were afforded liability coverage pursuant to the terms of Allstate's automobile insurance policy.

**C. The Circuit Court Abused Its Discretion When It Awarded Costs and Attorney's Fees To the Puetts.**

Hawai'i Revised Statutes (HRS) § 431:10-242 (2005) provides, in its entirety:



Where an insurer has contested its liability under a policy and is ordered by the courts to pay benefits under the policy, the policyholder, the beneficiary under a policy, or the person who has acquired the rights of the policyholder or beneficiary under the policy shall be awarded reasonable attorney's fees and costs of suit, in addition to the benefits under the policy.

(Emphasis added.)

The circuit court's order granting costs and attorney's fees to the Pruetts states that the award was made based on the Pruetts "prevail[ing] on the issue of coverage under the automobile insurance policies as to Allstate and AIG . . . in accordance with [HRS § 431:10-242][.]" AIG contends that the circuit court erred when it awarded costs and attorney's fees to the Pruetts because it was not ordered to "pay benefits" under its policy for purposes of HRS § 431:10-242.

In Mikelson v. United Servs. Auto. Ass'n, 108 Hawai'i 358, 360, 120 P.3d 257, 269 (2005), this court acknowledged that the "fundamental question with respect to the issue of awarding ['attorney's fees and the costs of suit'] is whether [the insurer] has in fact been ordered to pay benefits within the meaning of HRS § 431:10-242." (Brackets added.) In Mikelson, this court denied the insured's request for attorney's fees because the trial court ordered the insurer to provide "[underinsured motorist ("UIM")] coverage" and not "UIM benefits," the latter of which would be sufficient to satisfy "the plain and obvious meaning" of the phrase "pay benefits" as used within HRS § 431:10-242. 108 Hawai'i at 360-61, 120 P.3d at 259-60.

Similarly, in Ranger Insurance Co. v. Hinshaw, 103 Hawai'i 26, 30, 79 P.3d 119, 123 (2003), multiple complaints for declaratory relief were dismissed with prejudice. This court held that HRS § 431:10-242 was inapplicable because the insurer was not ordered to pay any benefits under its policy. Id. at 34, 79 P.3d at 127.

In this case, the circuit court ordered that the exclusions in both Allstate's and AIG's automobile insurance policies were inapplicable to the Pruetts, "and coverage is afforded under [AIG's automobile insurance policy] and [Allstate's automobile insurance policy][.] . . . In addition, [PIP] coverage is afforded to Ikaika Pruett under the Allstate Auto Policy arising from the February 8, 2002 accident." Because the circuit court did not order the Insurers to "pay benefits," as mandated by the plain language of HRS § 431:10-242, HRS § 431:10-242 does not apply to this case. See Mikelson, 108 Hawai'i at 360-61, 120 P.3d at 259-60; see also Ranger Ins. Co., 103 Hawai'i at 34, 79 P.3d at 127. Accordingly, we hold that the circuit court abused its discretion when it awarded costs and attorney's fees to the Pruetts pursuant to HRS § 431:10-242. See TSA Int'l Ltd., 92 Hawai'i at 253, 990 P.2d at 723 ("This court reviews the circuit court's denial and granting of attorney's fees under the abuse of discretion standard. . . . 'The trial court abuses its discretion if it bases its ruling on an erroneous view of the law or on clearly erroneous assessment of the evidence.'" (Citations omitted)).

**D. The Circuit Court Did Not Err When It Determined That the Pruetts Were Excluded From Coverage From Allstate's Homeowner's Insurance Policy.**

"Coverage X" under Allstate's homeowner's insurance policy states that "[s]ubject to the terms, conditions and limitations of this policy, Allstate will pay damages which an insured person becomes legally obligated to pay because of bodily injury or property damage arising from an occurrence to which this policy applies, and is covered by this part of the policy."<sup>7</sup> Exclusion number 5 under "Coverage X" ("Exclusion No. 5") states: "Losses We Do Not Cover Under Coverage X: . . . 5. We do not cover bodily injury or property damage arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer." (Italics and bold omitted.)

The Pruetts contend that Exclusion No. 5 does not apply in this case because "Ikaika's taking of the keys and vehicle, without license or permission, is causally related to the anticipated injury claims[]" and, therefore, Ikaika's act "do[es] not fall under his ownership, maintenance, use, occupancy, renting, etc. of a motor vehicle." In other words, the Pruetts allege that "negligent parental supervision"<sup>8</sup> is a separate claim

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<sup>7</sup> An "occurrence" is defined by the policy as "an accident[] . . . resulting in bodily injury or property damage."

<sup>8</sup> Apparently, a claim of "negligent parental supervision" is subsumed under Restatement (Second) of Torts § 316 (1965), which states:

A parent is under a duty to exercise reasonable care  
(continued...)

that is not excluded by the terms of Exclusion No. 5.

Accordingly, the Pruetts contend that liability coverage should be afforded to both Pearl Pruett and Ikaika Pruett through the terms of Allstate's homeowner's policy.<sup>9</sup>

In support of their claim, the Pruetts rely on McDonald v. Home Insurance Co., 235 A.2d 480 (N.J. Super. Ct. App. Div. 1967), and Worcester Mutual Insurance Co. v. Marnell, 496 N.E.2d 158 (Mass. 1986). Both of these cases hold that "negligent parental supervision" is a claim that is "separate and distinct from the use or operation of an automobile." Worcester Mut. Ins. Co., 496 N.E.2d at 161 (noting, however, that "without the severability provision" in the insurance policy, "a literal reading of the motor vehicle exclusion by itself precludes the [the parents] from coverage under the policy because [their son], an insured, owned and operated the motor vehicle involved in the fatal accident"); see McDonald, 235 A.2d at 482 (holding that the "[a]ction" against the insureds "was not based upon the ownership, maintenance, operation, use, loading or unloading of

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<sup>8</sup>(...continued)

so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent

(a) knows or has reason to know that he has the ability to control his child, and

(b) knows or should know of the necessity and opportunity for exercising such control.

<sup>9</sup> We note that it is undisputed that Pearl Pruett is the named insured on Allstate's homeowner's insurance policy. Additionally, the parties do not dispute that Ikaika Pruett qualifies as an "insured person" as defined by the policy.

automobiles[,]” but rather the insureds “alleged negligence in failing to supervise and control their child, knowing of his violent and dangerous habits”).

Notwithstanding the issue of whether a “negligent parental supervision” claim is covered by the terms of Allstate’s policy, the Pruetts overlook that potential “[l]iability of the insured to the plaintiff is not the criterion; it is the allegation in the complaint of a cause of action which, if sustained, will impose liability covered by the policy.” Danek v. Hommer, 100 A.2d 198, 203 (N.J. Super. Ct. App. Div. 1953), aff’d, 105 A.2d 677 (N.J. 1954). Indeed, we have said that a duty to defend “is broader than the duty to pay claims and arises whenever there is a mere potential for coverage.” Sentinel Ins. Co., Ltd. v. First Ins. Co. of Hawai‘i, Ltd., 76 Hawai‘i 277, 287, 875 P.2d 894, 904 (1994) (emphasis in original) (quotation marks and citation omitted). “The possibility may be remote, but if it exists[,] the [insurer] owes the insured a defense.” Id. (brackets in original) (quotation marks and citation omitted).

However, the duty to defend “is limited to situations where the pleadings have alleged claims for relief which fall within the terms for coverage of the insurance contract. Where pleadings fail to allege any basis for recovery within the coverage clause, the insurer has no obligation to defend.” Hawaiian Holiday Macadamia Nut Co., Inc. v. Indus. Indem. Co., 76 Hawai‘i 166, 169, 872 P.2d 230, 233 (1994) (quotation marks and citation omitted). When a claim has not been pled, this court

has expressly declined to consider whether that particular claim is covered by the terms of a liability insurance policy. See Fortune v. Wong, 68 Haw. 1, 4 n.1, 702 P.2d 299, 302 n.1 (1985) (declining to consider "the issue of whether a homeowner's policy affords coverage when negligent entrustment of an automobile is alleged[,] " because "[n]egligent entrustment' was not pleaded"); see also County of Kaua'i v. Scottsdale Insurance Co., Inc., 90 Hawai'i 400, 403, 978 P.2d 838, 841 (1999) (alleging, inter alia, negligent supervision in the following manner: "The County failed to properly train, supervise, hire and discharge its employees and/or agents including but not limited to Officer Abadilla" (emphasis added and brackets omitted)); Hawaiian Insurance & Guaranty Co., Ltd. v. Chief Clerk of the First Circuit Court, 68 Haw. 336, 339, 713 P.2d 427, 429 (1986) ("[S]everal suits alleging, inter alia, the negligent entrustment of the car by Gerald August Lapenes, Jr. to Mervoine Kaio were brought . . . .").

On January 8, 2004, Federico Casil and Angelina Casil, individually and on behalf of Michelle Casil (collectively, "the Casils"), filed a complaint against the Pruetts alleging, inter alia, that "Pearl Pruett is the mother of . . . Ikaika Pruett and is thus liable for the negligent actions of her minor son which caused injuries to . . . Michelle Casil." It also alleged that "Meredith Pruett was the owner of the car being driven negligently by . . . Ikaika Pruett, which car was being driven with the knowledge and consent of" Meredith and, therefore,

Ikaika's "negligence is imputed to" Meredith. Ben Manglicmot and Elizabeth Manglicmot, individually and on behalf of Charlene Manglicmot (collectively, "the Manglicmots"), filed a complaint on the same day and made identical allegations against the Pruetts.<sup>10</sup>

It does not appear that these complaints allege "negligent parental supervision." Instead, it appears that the complaints claim vicarious liability and negligent entrustment on the part of Pearl Pruett and Meredith Pruett, respectively. The Pruetts do not argue that the vicarious liability and negligent entrustment claims are covered by the terms of Allstate's homeowner's policy, notwithstanding the applicability of Exclusion No. 5. The Pruetts make their "negligent parental supervision" argument under the assumption that the complaints will be amended sometime in the future pursuant to the Hawai'i Rules of Civil Procedure. The record on appeal does not indicate that any such amendment has been made. Accordingly, we decline to express an opinion as to whether a claim of "negligent parental supervision" is covered under the terms of Allstate's homeowner's policy. See Hawaiian Holiday Macadamia Nut Co., 76 Hawai'i at 169, 872 P.2d at 233; see also Fortune, 68 Haw. at 4 n.1, 702 P.2d at 302 n.1.

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<sup>10</sup> To reiterate, on September 7, 2004, the circuit court filed its written order granting Allstate's motion for partial summary judgment. Therein, the circuit court ruled that Allstate was not "obligated" under the terms of the homeowner's insurance policy "to defend or to indemnify any of [the Pruetts] for any claim to recover for injuries sustained in the automobile accident of February 8, 2002, including but not limited to claims for negligent parenting."

The Pruetts also claim that, as the named insured, Pearl Pruett had a reasonable expectation of coverage under the terms of Allstate's homeowner's policy. In Fortune, however, this court observed that the parents' purchase of "two policies specifically written to insure the risks associated with the operation of automobiles[] . . . belies an expectation on their part that the homeowner's policy would cover [their son's] negligent driving[.]" 68 Haw. at 11, 702 P.2d at 306. Accordingly, this court applied the terms of an exclusion<sup>11</sup> to negate the insurer's liability for damages arising from the accident. Id.

Similarly, it is undisputed that Pearl Pruett is the named insured under an automobile insurance policy issued by Allstate. Because Pearl has a policy "specifically written to insure the risks associated with the operation of automobiles[,]"" Pearl's expectation that she is also covered under her homeowner's insurance policy is unreasonable. See Fortune, 68 Haw. at 11, 702 P.2d at 306.

Finally, the Pruetts claim that Exclusion No. 5 is ambiguous because Ikaika's "act" of taking the keys and vehicle, without a driver's license or permission, "is subject to differing interpretation[s] in the context of" Exclusion No. 5.

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<sup>11</sup> The exclusion at issue in Fortune excluded coverage for "bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of: . . . (2) any motor vehicle owned or operated by or rented or loaned to any Insured[.]" 68 Haw. at 10, 702 P.2d at 305.



They also appear to assert that Allstate's "Joint Obligations"<sup>12</sup> clause creates an ambiguity between it and Exclusion No. 5 because "Allstate claims that this [clause] applies to Coverage X[.]"

However, "the rule" construing an ambiguity against an insurer "is not applied without exception upon mere assertions of ambiguity." Fortune, 68 Haw. at 10, 702 P.2d at 306. "Rather, ambiguity is found [and the rule] is followed only when the contract taken as a whole is reasonably subject to differing interpretation." County of Kaua'i, 90 Hawai'i at 406, 978 P.2d at 844 (brackets in original) (quotation marks and citation omitted).

As such, the Pruetts' assertion that Ikaika's act creates an ambiguity with the terms of Allstate's policy is without merit because it is the terms of the policy "taken as a whole[,]" and not the actions of the insured, that can be "reasonably subject to differing interpretation." See id.

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<sup>12</sup> The "joint obligations" clause is contained within the policy's explanation of the "Insuring Agreement," and states:

The terms of this policy impose joint obligations on the person named on the Policy Declarations as the insured and on that person's resident spouse. These persons are defined as you or your. This means that the responsibilities, acts and omissions of a person defined as you or your will be binding upon any other person defined as you or your.

The terms of this policy impose joint obligations on persons defined as an insured person. This means that the responsibilities, acts and failures to act of a person defined as an insured person will be binding upon another person defined as an insured person.

(Bold omitted.)

Moreover, Allstate did not refer to its "joint obligations" clause in a manner suggesting that it was asserting that the clause constituted an exclusion to coverage. Instead, in an attempt to distinguish a case relied on by the Pruetts, Worcester Mutual Insurance Co., Allstate merely refers to the clause to illustrate that its policy does not have a severability clause. Accordingly, we hold that the circuit court did not err when it determined that the Pruetts were excluded from coverage under the terms of Allstate's homeowner's insurance policy.

#### IV. CONCLUSION

Based on the foregoing analysis, we affirm in part and reverse in part the circuit court's October 18, 2004 final judgment.

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